



bayou internet

P.O. Box 4808
Monroe, Louisiana 71211
Phone: 318.323.0011 or 888.30.BAYOU
Fax: 318.338-2506

Received & Inspected

JAN 25 2010

FCC Mail Room

12/11/09

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

RE: Appeal of denial of appeal sent to USAC for Filer ID # 825997 Letter of Appeal dated August 5, 2009 CC Docket No. 96-45.

Dear Sir or Madam:

In the denial letter, USAC states that "USAC records show that Bayou did not submit the form until October 29, 2009." They also state that the reason for their agreeing with the \$700 late filing fees was based on their not receiving the form until October 29, 2009. I would like to introduce into evidence (evidence sent to Chang-Hua Chen in October of 2009) two USPS Certified Return Receipts for Certified Mail that was marked RECEIVED by USAC. The first was received on August 5, 2009 and the second was marked RECEIVED by USAC on October 23, 2009. Please see the attached scanned copies of these forms. Both of these were sent to 2000 L. St. NW, Suite 200, Washington, DC 20036 as per USAC's instructions. Both letters had original signed Form 499-A forms enclosed. USAC is responding to the Letter of Appeal which had an original signed Form 499 included with it, yet they claim they never got it.

From my conversations with USAC on October 27-29, 2009, USAC has no record of having received EITHER of these documents. Information about my situation was shared with Chang-Hua Chen, Tanya Blalock and Stefani Watterson. They all looked at my case on October 27th or 28th and agreed that they had NOT received my Form 499-A. After several very frustrating attempts to communicate with Chang-Hua Chen about my options for getting this information to USAC, I was finally given a correct fax number (after being given an incorrect one twice) and an email address to send scanned copies to. I sent the 499-A to both. I received confirmation only minutes later that my Form 499-A had been certified. I never received any further notice of recognition for the certified mail receipts that I had sent proving that I had already sent this information twice to USAC via certified mail and that I have proof both were in fact received by USAC.

How is it possible that USAC lost my first form sent via 1st Class US Mail AND two subsequent copies sent via Certified Mail by the United States Postal Service? Why is it that after I shared proof of my Certified Return Receipts with USAC, they still deny having received them? I don't feel that it is fair for USAC to bill me for late fees when there were for fact two letters sent to them lost, and I think logic and any fair minded judge would say that yes, there were three letters sent to them that were lost. Given the facts of the return receipts that I have, there is no way USAC should bill me past August 5, 2009. Given that they lost not one but TWO certified letters I sent them, I think that you should void all charges since it is certainly believable that they lost my first letter that was sent by first class mail as well.

I am including all of the emails that back up what I am saying happened in this letter as well as a copy of the certified return receipts for the letters that USAC apparently, by their own admission, lost. They can't deny the USPS receipts that I have showing that they did in fact receive the certified letters that I sent them on two occasions.

Thank you for your time reviewing this,

Paul Vingiello
Operations Manager
Bayou Internet
1109 Hudson Lane, Monroe, LA 71201
Phone 318-338-2022 fax 318-323-5053 email paulv@bayou.com

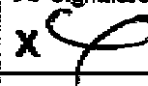

No. of Copies rec'd 0
List ABCDE

www.bayou.com

BAYOU INTERNET

13183235053

10/27 '09 15:20 NO.335 02

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature X </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Address</p>	
		B. Received by (Printed Name)	C. Date of Delivery
			8-5-09
1. Article Addressed to:		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Universal Service Administrative Company Letter of Appeal Billing, Collections, & Disbursement 2000 L Street, NW, Ste 200 Washington, DC 20036		USAC AUG 05 2009 Received	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7003 3110 0005 1729 9273	

13183235053 10/27 '09 15:20 NO.335 01

BAYOU INTERNET

SENDER: COMPLETE THIS SECTION

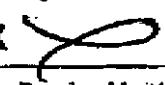
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
USAC
2000 L. St. NW
Suite 200
Washington, DC 20036

Article Number
(Transfer from service label)

7009 1680 0001 2722 0791

COMPLETE THIS SECTION ON DELIVERY

A. Signature X 		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
B. Received by (Printed Name) USAC	C. Date of Delivery 10-23-09	
D. Is delivery address different from item 1? If YES, enter delivery address below:		<input type="checkbox"/> Yes <input type="checkbox"/> No
OCT 23 2009		
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee)		<input type="checkbox"/> Yes

It is done! I will let the appeal team knows.

From: Paul [mailto:paulv@bayou.com]
Sent: Thursday, October 29, 2009 2:57 PM
To: Form499
Subject: RE: FCC 2009 form 499A filer ID 825997

OK. Now you FINALLY gave me a working fax number. Look at the emails!!!! The last four digits apparently are 0080 and NOT the 0800 as you stated the first two times. I have faxed it and have attached a scanned copy to this email. I hope that is what you were attempting to suggest I do in the email just sent.

Thanks,

Paul

From: Form499 [mailto:form499@usac.org]
Sent: Thursday, October 29, 2009 12:38 PM
To: Paul
Subject: RE: FCC 2009 form 499A filer ID 825997

Can you either scanned the form or dial to 202-776-0080

Again, I get an ERROR when dialing that number. I tried it again today just for giggles and grins....same results. It tells me that the number is out of service. I have tried that number from my cell phone, work phone and fax machine. I get the same error each time. It tells me that I have dialed the correct number, but that it is not in service. Please check and send me a working number.

Thanks,

Paul

From: Form499 [mailto:form499@usac.org]
Sent: Thursday, October 29, 2009 12:03 PM
To: Paul
Subject: RE: FCC 2009 form 499A filer ID 825997

The number is 202-776-0800

From: Paul [mailto:paulv@bayou.com]
Sent: Wednesday, October 28, 2009 7:26 PM
To: Paul Vingiello; Form499
Cc: Form499
Subject: RE: FCC 2009 form 499A filer ID 825997

Can I at least get a response? Did anyone get this email? I really want to get this resolved, but don't know what else to do. I am getting very frustrated with the whole thing.

Thanks,

Paul Vingiello
Bayou Internet

From: Paul [mailto:paulv@bayou.com]
Sent: Wednesday, October 28, 2009 11:36 AM
To: Form499
Subject: RE: FCC 2009 form 499A filer ID 825997

No, I can not. WHEN I DIAL THAT NUMBER I GET AN ERROR THAT THE NUMBER IS NOT IN SERVICE!!!! Yes, I tried dialing it from my fax, my desk phone and my cell phone. All gave the same message.

Want to try again?

Thanks,

Paul

From: Form499 [mailto:form499@usac.org]
Sent: Wednesday, October 28, 2009 10:09 AM
To: Paul Vingiello
Subject: RE: FCC 2009 form 499A filer ID 825997

Could you fax a copy of the 499A to 202-776-0800 attn: Chang-Hua Chen

From: Paul Vingiello [mailto:paulv@Bayou.com]
Sent: Tuesday, October 27, 2009 5:10 PM
To: Form499
Subject: RE: FCC 2009 form 499A filer ID 825997

I have filed the letter of appeal and re-filed the 499A. I am not sure what you want for proof. I have the certified return receipts from the USPS for both the appeal and the re-filed 499 attached. Unfortunately (and I will never make that mistake again!!) I did not send the first 499A via certified mail so I have no proof that it was turned in. I wish I could take a lie detector test or something. All I got was written notice after several months and several hundred dollars in fines had racked up. That seems silly when we know you have my email on file.

Thanks,

Paul Vingiello
Bayou Internet

From: Form499 [mailto:form499@usac.org]
Sent: Tuesday, October 27, 2009 12:16 PM
To: Paul Vingiello
Subject: FW: FCC 2009 form 499A filer ID 825997

Please file the form as soon as possible, then you should be OK, but you have to file the form.

From: Form499
Sent: Tuesday, October 27, 2009 1:11 PM
To: Tanya Blalock
Subject: RE: FCC 2009 form 499A filer ID 825997

No, she wants to know that about their appeal

From: Tanya Blalock
Sent: Tuesday, October 27, 2009 1:06 PM
To: Form499
Cc: Stefani Watterson
Subject: RE: FCC 2009 form 499A filer ID 825997

Has the form been received? I don't know anything else to tell him other than what you have already stated: "mail a signed copy of the FCC form 499A".

From: Form499
Sent: Tuesday, October 27, 2009 12:20 PM
To: Tanya Blalock
Subject: FW: FCC 2009 form 499A filer ID 825997

Tanya:
Could you please give this lady a ring about their appeal?

From: Paul [mailto:paulv@bayou.com]
Sent: Tuesday, October 27, 2009 11:47 AM
To: Form499
Subject: RE: FCC 2009 form 499A filer ID 825997

I have done this. I show that the most recent original sent was received at the address listed below on 10/23/09. What do I need to do to find out about my letter of appeal on these fines? I sent a letter along with an original signed filing by Bob Holladay that was received on 8/5/09. It was sent to USAC, Letter of Appeal, Billing, Collections and Disbursement, 2000 L Street NW, Ste 200, Washington, DC, 20036. That was the address given to correspond with after the penalty was assessed. I have not heard back from it unless this email was a reply based on my appeal.
Thanks,

Paul Vingiello
Bayou Internet

From: Form499 [mailto:form499@usac.org]
Sent: Tuesday, October 20, 2009 10:03 AM
To: paulv@bayou.com
Subject: FCC 2009 form 499A filer ID 825997

Paul:

In order to stop the late filing fee. Please mail a signed copy of the FCC form 499A for 2009 with officer of Bob Holladay at

USAC
2000 L St. NW
Suite 200
Washington, DC 20036



Universal Service Administrative Company

Administrator's Decision on Contributor Appeal

By Certified Mail

December 7, 2009

Mr. Paul Vingiello
Operations Manager
Bayou Internet
1109 Hudson Lane
Monroe, LA 71201

Re: Bayou Internet. (Filer ID # 825997)
Letter of Appeal dated August 5, 2009

Dear Mr. Vingiello:

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeal submitted on behalf of Bayou Internet, dated August 5, 2009. The appeal requests that USAC waive the late filing fees related to Bayou's 2009 FCC Form 499-A, which was submitted after the April 1, 2009 deadline. As discussed in more detail below, USAC hereby denies the appeals.

Decision on Appeal: Denied.

Federal Communications Commission (FCC or Commission) regulations require that telecommunications carriers file an annual FCC Form 499-A. In addition, carriers are also required to file quarterly Form 499-Qs, unless they meet the *de minimis* exemption.¹ The Commission's rules state that the Administrator shall assess a monthly remedial

¹ See 47 C.F.R. § 54.706(a) ("Entities that provide interstate telecommunications to the public or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms"); See also, 47 C.F.R. § 54.711(a) ("The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis."); 47 C.F.R. § 54.708 (Providing an exemption from the reporting requirements of Section 54.711(a) only if the "...contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service, numbering administration, or shared costs of local number portability.") We note that regulations governing the Telecommunications Relay Service requires all interstate telecommunications service providers to file at least an annual Telecommunications Reporting Worksheet (FCC Form 499-A). 47 C.F.R. § 64.604(c)(5)(iii)(A-B). Regulations governing local number portability and number administration require all telecommunications carriers providing service in the United States to complete a FCC Form 499-A. 47 C.F.R. §§ 52.32(b) and 52.17(b).

sanction if a contributor is more than 30 days delinquent in filing a Form 499 until the date of filing.² In all cases, it is the contributor's obligation to ensure filings are made in a timely manner.

The 2009 Form 499-A had a due date of April 1, 2009. USAC records show that Bayou did not submit the form until October 29, 2009. The appeal states that Bayou sent the Form 499-A to USAC via first class mail in April, 2009. However, USAC has no record of receiving the form. Because the form was not received until October 29, 2009, late filing fees in the amount of \$100 per month, totaling \$700, were assessed and reflected on Bayou's July through October invoices.³

Because Bayou's 2009 Form 499-A was not received before the April 1, 2009 due date, assessment of a late filing fee is appropriate and Bayou's appeal is hereby denied.

Pay and Dispute Policy

The FCC, in its Comprehensive Review Order,⁴ directed USAC to assess late fees on all unpaid balances. It is USAC's policy to enforce any late payment fees associated with unpaid balances. Failure to pay USF contribution amounts when due will result in late charges being assessed on the amount outstanding.

USAC records indicate Bayou has not fully paid its contribution obligation, and, as a result, in addition to the late filing fees of \$700 mentioned above, Bayou has accumulated late payment penalties totaling approximately \$4.59. Any debt more than 90 days old is being transferred to the FCC for collection. USAC wishes to advise Bayou that it will continue to receive late fees and penalties until its account is paid in full.

If you wish to appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universalservice.org/fund-administration/contributors/file-appeal>

Sincerely,

USAC

² *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Report and Order*, WC Docket No. 05-195, et al., FCC 07-150, 22 FCC Rcd. 16372, 16375-16376, ¶ 14 (2007) (*Comprehensive Review Order*), citing 47 C.F.R. § 54.713.

³ Pursuant to the *Comprehensive Review Order*, and as stated on the monthly invoice under Late Filing Sanction, the late filing fee is the greater of \$100 per month or an amount computed using an interest rate equal to the U.S. prime rate plus 3.5 percent, which is then multiplied against the contributors monthly contribution obligation. *Comprehensive Review Order* at ¶ 14.

⁴ *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Report and Order*, WC Docket No. 05-195, et al., FCC 07-150, 22 FCC Rcd. 16372, ¶ 14 (2007) (*Comprehensive Review Order*), citing 47 C.F.R. § 54.713.

Mr. Paul Vingiello
Bayou Internet
December 7, 2009
Page 3 of 3

cc: Regina Dorsey, FCC Office of Managing Director
Hillary DeNigro, FCC Enforcement Bureau
Trent Harkrader, FCC Enforcement Bureau
Erica Myers, FCC Wireline Competition Bureau

OPTION A.2 - FILE A FURTHER APPEAL WITH THE FCC

A contributor may file an appeal with the FCC if the contributor disagrees with USAC's response to a Letter of Appeal. ***The contributor must file its appeal to the FCC within 60 days of the date of the USAC decision.***

If you are alleging prohibitive conduct by a third party, there are additional rules for serving a copy on that third party and allowing them to respond. Consult 47 C.F.R. §54.721, which can be found in Title 47 of the Code of Federal Regulations.

The FCC address to which a contributor may direct its appeal is:

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8AM - 5:30PM ET)

For hand-delivered or messenger-delivered items use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8AM - 7PM ET)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site www.fcc.gov/cgb/ecfs. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they

are received at any time before 12:00 a.m. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 a.m.

Important note:

Please be sure to reference **CC Docket No. 96-45** on all communications with the FCC. The appeal transmission, whether electronic or paper, must also provide your company's name and study area code, plus necessary contact information including name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is made electronically via ECFS, please include a copy of the USAC letter being appealed.